

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:
UNITED STATES OF AMERICA,	:
	:
-VS.-	:
	:
JOSEPH P. COLLINS	: S1 07 CR 1170 (LBS)
	:
Defendant.	:
	:
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**DEFENDANT JOSEPH P. COLLINS' SECOND
SUPPLEMENTAL REQUESTS TO CHARGE**

WILLIAM J. SCHWARTZ (WS 8462)
JONATHAN P. BACH (JB 9710)
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Attorneys for Defendant Joseph P. Collins

TO: LEV L. DASSIN, ESQ.
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Attn.: Christopher L. Garcia, Esq.
Nicholas S. Goldin, Esq.

DEFENSE SUPPLEMENTAL CHARGE NUMBER 5:

THEORY OF DEFENSE CHARGE - GENERALLY

Mr. Collins contends that at all times, he acted in good faith in performing legal services for Refco. Specifically, he contends that he did not know the true financial condition of Refco and did not engage in any effort intended to deceive third parties or to assist others in deceiving third parties concerning the true financial condition of Refco. He contends that if he made misstatements to anyone, they were made in good faith, without a specific intent to defraud as to the true state of affairs at Refco.

I instruct you that unless you find that the government has proven beyond a reasonable doubt that Mr. Collins had knowledge of the true state of Refco's financial condition, and acted with specific intent to deceive others as to that financial condition, you must acquit the defendant on the charge you are considering. I further instruct you that an honest belief that statements were true or representations were accurate is a complete defense, even if those statements or representations were not true.

AUTHORITY

United States v. Durham, 825 F.2d 716, 718 (2d Cir. 1987) (Second Circuit has "repeatedly recognized a criminal defendant's right to a charge which reflects the defense theory"); *United States v. Alfonso-Perez*, 535 F.2d 1362, 1365 (2d Cir. 1976) (criminal defendant "entitled to have instructions presented relating to any theory of defense for which there is any foundation in the evidence, no matter how weak or incredible . . ."); *United States v. Dove*, 916 F.2d 41, 47 (2d Cir. 1990) ("a criminal defendant is entitled to instructions relating to his theory of defense, for which there is some foundation in the proof, no matter how tenuous that defense may appear to the trial court").

DEFENSE SUPPLEMENTAL CHARGE NUMBER 6:

THEORY OF DEFENSE CHARGE – COUNTS FOUR AND FIVE

With respect to Counts Four and Five concerning certain filings with the SEC made by Refco – Mr. Collins contends that he did not know the true financial state of Refco, and did not know that any of the statements made in those filings were false or omitted material facts.

I instruct that you must acquit Mr. Collins of these counts unless you find that the government has proven beyond a reasonable doubt that Mr. Collins actually knew that the SEC filings contained materially false statements of fact or material omissions relating to the true financial state of Refco.

DEFENSE SUPPLEMENTAL CHARGE NUMBER 7:

THEORY OF DEFENSE CHARGE – REVOLVER COUNTS

With respect to Counts 10 through 13 – involving the Chase revolving credit agreements – Mr. Collins contends that he understood that Refco had dedicated professionals who were responsible for making any required notices to Chase and did not know that the guarantees included in the back-to-back loan transactions had not been disclosed. I instruct you that you must acquit Mr. Collins of these charges unless the government proves beyond a reasonable doubt that Mr. Collins had actual knowledge that Refco did not disclose the guarantees to Chase.

Dated: New York, New York
June 23, 2009

Respectfully submitted,

/s/ William J. Schwartz
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CERTIFICATE OF SERVICE

I, William J. Schwartz, hereby certify that on this 23rd day of June, 2009, I caused a true and correct copy of Defendant's Second Supplemental Requests To Charge to be filed electronically. Notice of this filing will be electronically mailed to all parties registered with the Court's electronic filing system.

/s/ William J. Schwartz
William J. Schwartz (WS 8462)